MOHAMED RAIHAN BIN IBRAHIM & ANOR. v. GOVERNMENT OF MALAYSIA & ORS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Syed Othman & Salleh Abas F.JJ.) October 6, 1980 & February 21, 1981]
[Kuala Lumpur — Federal Court Civil Appeal No. 179 of 1979]

Torts — Damages for personal injuries — Accidents occurring in practical gardening lesson — Duty of supervision by school teacher — Failure to take reasonable and proper steps to prevent injury being sustained — Failure to provide safe system.

School — Gardening class — Duty of supervision by school teacher.

In this case the first appellant sustained injuries when he was accidentally struck on the head by a changkol wielded by a fellow pupil in the course of a practical gardening class. The appellants sued for damages claiming that the respondents failed to provide proper supervision of the pupils participating in the gardening class and failed to instruct the pupil who caused the injury on the proper use of a changkol. The claim was dismissed in the High Court as Ajaib Singh J. held that the respondents had given proper instructions and warnings on the use of the gardening implements and had taken the reasonable steps and precautions to ensure the safety of the pupils when using agricultural implements. The appellants appealed.

Held, allowing the appeal: (1) in this case the respondents were negligent for failing to take all reasonable and proper steps to prevent the appellant under their care from sustaining the injury and moreover their teacher did not check the condition of the garden tools nor provide a safe system of holding the garden class;

(2) in this case the teacher appreciating that the boys were handling dangerous instruments had not given sufficient warning as to their use nor had she taken steps to see that the pupils were positioned within such distance between them as to avoid injuries from being inflicted.

Case referred to:-

(1) *Government of Malaysia & Ors.* v. *Jumat bin Mohamed & Anor.* [1977] 2 M.L.J. 103.

FEDERAL COURT.

Dato Wong Seng Chow for the appellant.

Mah Weng Kwai (Senior Federal Counsel) for the 1st and 3rd respondents.

S. Periasamy for the 2nd respondent.

Cur. Adv. Vult.

Salleh Abas F.J. (delivering the judgment of the Court): This is an appeal from the decision of Mr. Justice Ajaib Singh dismissing the appellant's claim for damages in respect of personal injuries sustained by him during a practical agricultural class on March 15, 1971.

At the material time the appellant was a form one pupil in Port Dickson Secondary School. One of the subjects taught to his class was agricultural science which entailed practical gardening lessons. Three such practical lessons were held without any incident. In the fourth lesson held on March 15, 1971 the appellant was accidentally struck on the head by a changkol wielded by a fellow pupil named Raja Aminuddin bin Raja Ahmad (PW3) and thus suffered a 2½" lacerated wound over the right parietal bone and a depressed fracture of the same bone posteriorly. He sued the respondents for damages claiming that they failed to provide proper supervision of the pupils participating in the gardening class, and also failed to instruct the said Raja Aminuddin in the proper use of a changkol. Ajaib Singh J. dismissed the suit holding that the respondents had given proper instructions and warnings on the use of the gardening implements and had taken the reasonable steps and precautions to ensure the safety of the pupils when using agricultural implements.

The appeal before us is limited to the question of liability only as in the event of liability of the respondents being established, general damages of $6,000 has already been agreed to by the parties.

The facts are not much in dispute. On the day in question there were about 37 or 38 pupils taking part in the practical agricultural class. The class was under the supervision of a lady teacher, Mrs. Hau Kan Yong (DW2). The pupils were lined up and told to take agricultural implements, such as spades, changkols and baskets from the store. After they had picked up these tools, they were marched to a place, where they were to complete making vegetable beds. These were arranged in two rows, each row consisting of three beds. As there were six beds altogether, the pupils were divided into six groups, one group being responsible for each bed. The measurement of each bed is 15 feet long and 3 feet wide. In the morning in question the appellant was using a spade to raise the level of his bed, whilst his fellow pupil, Raja Aminuddin working on the next bed was using a changkol with a five foot long handle to raise the earth for the same purpose. As they were very close to each other, the appellant asked Raja Aminuddin not to wield his changkol until he had completed levelling his vegetable bed. Raja Aminuddin, apparently animated by the joy of using the changkol told the appellant that he could not care less and so continued to wield it. The appellant thinking that his request was heeded, continued to work with the spade and whilst doing so was thus struck on the head by the changkol. At the time of the accident Mrs. Hau Kan Yong (DW2) was sitting under a tree about 4 yards away from the appellant's bed and was then not looking at the pupils. Only after she had heard some one calling out for her, did she turn to the direction of the call and saw the appellant holding his head and bleeding.

In this case there is no doubt that Raja Aminuddin was negligent, but we are not concerned with his responsibility. What we are to determine here is whether the respondents were guilty of negligence for not providing proper supervision and for failing to give proper instruction as to the use of agricultural tools.

It is settled law that a school teacher is under a duty to exercise supervision over his pupils when they are in the school premises, either in the classroom or the playground. The degree of supervision depends on the circumstances of each case, such as the age of the pupils and what they are doing at the material time. If the teacher knows that the pupils are engaged in doing acts which are likely to cause injuries to one another, the teacher is under a duty to take steps to ensure the safety of the acts. Let us now examine the evidence.

There is no doubt that the accident occurred because the appellant using a spade and Raja Aminud-

din using a five foot long handle changkol were too close to each other. If both were using spades, with the same distance between them the accident could not have taken place. According to the appellant he was only two feet away from Raja Aminuddin and according to the latter, they were five feet apart, whilst according to another fellow pupil, Yong Kwee Len (DW4) they were only 3 to 4 feet apart. However according to the sketch plan drawn by Mrs. Hau Kan Yong (DW2), the distance between them was seven feet. Whatever the exact distance may be, it is obvious that the appellant was within striking distance if Raja Aminuddin were to wield the changkol or he would not have been struck at all. Either both should not be where they were, or both should not use their tools at the same time.

The Ministry of Education issued instructions to all schools, including to the respondents' school as to the safety measures which should be taken with regard to the use of agricultural tools. These are: —

(1) to maintain sufficient distance whilst working with the tools;

(2) to use proper tools;

(3) to use sharp instruments; and

(4) to maintain discipline.

This instruction must have been drawn up with an appreciation of the danger which is likely to result from the use of sharp instruments like changkols by young children either working singly or in groups. Its framers therefore laid down guidelines which must be followed in order to prevent harm from taking place.

In the morning in question the pupils were left on their own to take the tools from the store-room. Neither Mrs. Hau Kan Yong nor any other teacher did distribute them to the boys, nor did she specify what tool each boy should take. The boys were simply told to pick up gardening tools from the store-room. Having picked them up and marched to the place of their gardening lessons, they were simply told in a general way not to be near one another. In the cross-examination, Mrs. Hau Kan Yong admitted that as a safety measure either Raja Aminuddin or the appellant should not be where they were, otherwise the appellant might be hit. Her excuse was that she did not see the appellant there before the accident and that if she had seen him there she would not have let him remain there. The question is why she did not see them? No explanation at all was given by her why at the time of the accident she was not looking in the direction of the class and in particular at the appellant and Raja Aminuddin. She was simply sitting under a tree, presumably resting under a shade looking on to the left side.

As regards warnings she said she warned the pupils to be careful and not to fool around when using the instruments. But is the giving of such general warning as this sufficient when the pupils being of very young age were talking to one another and playing about and joking; and above all very close to one another? According to DW4, another fellow pupil who was pulling weeds on the third vegetable bed, Mrs. Hau Kan Yong instructed the pupils that when using changkols, they must face each other and must maintain a distance of 3 to 4 feet between them and that was the distance between the appellant and Raja Aminuddin on that morning before the accident. If such is the instruction, it is obvious that the distance is not a safe distance, because the changkol has a five foot handle. The teacher herself said nothing in her evidence as to what distance she asked the pupils to maintain between them. It would therefore appear that she gave no instructions at all as to the use of the changkol and that neither did she tell Raja Aminuddin or the appellant where they should stand in relation to one another. The boys were simply left to their own devices with general instructions to complete the work as best as they could. Under the circumstances we are for the view that mere warning to be careful does not amount to proper supervision, especially when it is established that the boys were of young age and in jovial mood as reflected by the response of Raja Aminuddin, who said "I do not care", to a request by the appellant not to use the changkol.

Further Mrs. Hau Kan Yong said that she was responsible for distributing the instruments to the pupils. It appears that she did not do so in the morning in question; because if she had done so, she would have discovered the defect of the changkol, which according to Raja Aminuddin has a loose blade. Such a changkol is obviously dangerous, and should not be used on that morning, because when wielded in the air it is not certain which way it would fall. The evidence simply shows that the pupils were told to take the agricultural tools from the store-room and thereafter to march to the vegetable beds.

In conclusion we are of the opinion that having regards to what we have discussed above, the respondents were therefore negligent for failing to take all reasonable and proper steps to prevent the appellant under their care from sustaining the injury and that their teacher did not check the condition of the garden tools nor provided a safe system of holding the gardening class. This is not a case where the teacher, as in the case of *Government of Malaysia & Ors.* v. *Jumat bin Mohamed & Anor.*,[1] had provided sufficient supervision but could not prevent the injury from being inflicted because of the stupidity of a pupil, whose exuberant behaviour was unknown to the teacher. But this is a case where a teacher appreciating that the boys were handling dangerous instruments had not given sufficient warning as to their use nor had she taken steps to see that pupils were positioned within such distance between them as to avoid injuries from being inflicted. There is a world of difference between the use of a changkol and that of a pencil.

We therefore hold that the respondents liable, and allow the appeal with costs.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; Nahappan, Muthu & Peri.*